

49th MEETING
OF THE
MARYLAND HEALTH CARE COMMISSION

Thursday, October 30, 2003
Minutes

Chairman Wilson called the meeting to order at 1:00 p.m.

Commissioners present: Crofoot, Ginsburg, Jensen, Lucht, Malouf, Moffitt, Nicolay, Risher and Salamon
Present via teleconference: Row and Zanger

Chairman Wilson called the meeting to order. He welcomed new Commissioners Jeffrey Lucht, who is the General Manager of Key and Select Accounts for Aetna, Dr. Robert Moffit, Director, Center for Health Policy Studies, Heritage Foundation and a former Deputy Assistant Secretary at the Department of Health and Human Services; Robert Nicolay, a retired businessman from Carroll County, and Debra Risher, a small business owner from Anne Arundel County.

ITEM 1.

Approval of Minutes

Commissioner Ernest Crofoot made a motion to approve the Minutes of the July 17, 2003 meeting of the Commission, which was seconded by Vice Chairman George Malouf, and unanimously approved.

ITEM 2.

Update on Commission Activities

- Data Systems and Analysis
- Health Resources
- Performance and Benefits

There were no oral presentations. Copies of the *Update* were available on the documents table and on the Commission's website at: <http://www.mhcc.state.md.us/mhccinfo/cmsnmtgs/updates/>.

ITEM 3.

FINAL ACTION: COMAR 10.24.01 — Determination of Certificate of Need for Health Care Facilities — Amendments to 10.24.01.01, .03, .09, and .12 .

Chairman Wilson announced that the next item on the agenda would be Final Action on COMAR 10.24.01. Suellen Wideman, AAG said that on June 19, 2003, the Maryland Health Care Commission, after considering comments received during an informal public comment period, adopted proposed amendments to regulations found at **COMAR 10.24.01.01, .03, .09, and .12** under *Determination of Certificate of Need for Health Care Facilities*. The proposed permanent regulations were published in the July 25, 2003 *Maryland Register*, with comments due by August 25, 2003. Comments received from seven organizations during this comment period, as well as the staff analysis and recommendation, were provided to the Commissioners. Staff recommended several non-substantive changes to the proposed regulations. Vice Chairman George Malouf made a motion that the Commission approve the regulations, which was seconded by Commissioner Steve Salamon, and unanimously approved.

FINAL ACTION: COMAR 10.24.01 — Determination of Certificate of Need for Health Care Facilities — Amendments to 10.24.01.01, .03, .09, and .12 is hereby APPROVED.

ITEM 4.

ACTION: CERTIFICATE OF NEED

- **Future Care:** Exemption Request to Relocate Four Beds from Future Care –Irvington to Future Care-Charles Village
- **James Lawrence Kernan Hospital:** Exemption Request to Reallocate One Mixed-Use Operating Room from Maryland General Hospital to James Lawrence Kernan Hospital
- **Riderwood Village Specialty Home Health Agency:** Application for Certificate of Need, Docket No. 03-15-2115

Chairman Wilson announced that Susan Panek, Chief, Certificate of Need, would present a request by Future Care – Irvington and Future Care – Charles Village for an exemption from CON review for a transfer of four delicensed comprehensive care beds between the two Baltimore City nursing facilities pursuant to a merger or consolidation under Commission statute and regulation.

Ms. Panek said that the FutureCare Owners Group (“FutureCare”), which has proposed this transfer of beds between the two commonly-owned facilities, owns and operates nine nursing homes in Maryland. Staff recommended that the Commission approve the proposed permanent transfer of 4 temporarily delicensed comprehensive care facility beds from FutureCare-Irvington to FutureCare-Charles Village. The facilities are eligible for the exemption because they are commonly owned. The capacity of FutureCare-Charles Village will increase from 105 CCF beds to 109 licensed CCF beds. Ms. Panek introduced Eric Shoke, Howard Sollins, and Jack Eller from Future Care to the Commission. Commissioner Ernest Crofoot made a motion that the Commission approve the staff recommendation, which was seconded by Commissioner Jensen, and unanimously approved.

Future Care: Exemption Request to Relocate Four Beds from Future Care –Irvington to Future Care-Charles Village is hereby APPROVED.

- **James Lawrence Kernan Hospital, Exemption Request to Reallocate One Mixed Use Operating Room from Maryland General Hospital to James Lawrence Kernan Hospital**

Chairman Wilson recused himself from this matter. Vice Chairman Malouf chaired the meeting. Ms. Panek said that Maryland General (“Maryland General”) Hospital and the James Lawrence Kernan Hospital (“Kernan”), acute general hospitals located in Baltimore City, have submitted a Notice of Intent to seek the Commission’s approval of an exemption from Certificate of Need (CON) review to reallocate surgical capacity equivalent to one mixed-use general-purpose operating room from Maryland General to Kernan. Both hospitals are members of the University of Maryland Medical System (“UMMS”), and have applied for the CON exemption available for a “change in the type or scope of services” provided by a health care facility proposing this change “pursuant to a merger or consolidation” of health care facilities. Under the proposed reallocation of surgical capacity, Maryland General will permanently close one mixed-use general-purpose operating room, and Kernan will renovate and re-equip space in its existing hospital-based surgical suite for the primary purpose of providing dedicated space for complex dental surgery cases. Kernan has experienced a steady increase in these cases, and currently employs two full-time dentists and another on a part-time basis. Many of its patients are mentally and physically disabled adults and children who need a “substantial amount of dental work”; because of the extent and complexity of the procedures involved as well as the underlying cognitive and physical challenges presented by many of the patients, these cases are performed under general anesthesia. The increasing caseload of complex dental cases has presented problems of scheduling, and has compromised Kernan’s ability to provide blocks of time to all of its practicing surgeons. Ms. Panek introduced James Ross from the University of Maryland and Jack Tranter, counsel, to the Commissioners. Ms. Panek said that staff recommended approval of the exemption. Commissioner Jensen made a motion to approve the staff recommendation, which was seconded by Commissioner Salamon, and unanimously approved.

James Lawrence Kernan Hospital, Exemption Request to Reallocate One Mixed Use Operating Room from Maryland General Hospital to James Lawrence Kernan Hospital is hereby APPROVED.

Riderwood Village Specialty Home Health Agency: Application for Certificate of Need, Docket No. 03-15-2115

Chairman Wilson resumed presiding over the meeting. Ms. Panek said that Charlestown Community, Inc. (“Charlestown”), with corporate offices at 711 Maiden Choice Lane, Catonsville, Maryland 21228, has applied for a Certificate of Need (CON) to extend the authorized service area of its specialty home health agency to serve the residents of Riderwood Village, a continuing care retirement community (“CCRC”) with approximately 1,000 residents on a 153-acre site that straddles the border of Montgomery and Prince George’s Counties. Charlestown is an existing specialty home health agency, in the category of agencies serving only the members of specific CCRCs, currently authorized to provide home health agency services to residents of the Charlestown retirement community, and to residents of Oak Crest Village. Both of these CCRCs are located in Baltimore County. All three communities were developed, and are now managed, by Erickson Retirement Communities (formerly known as Senior Campus Living.) Based on their review and analysis, staff recommended that the Commission APPROVE the proposed expansion of the service area of Charlestown’s specialty home health agency to include a third continuing care retirement community, by establishing a Medicare-certified branch office to serve Riderwood Village, on the border of Montgomery and Prince George’s Counties. Ms. Panek introduced Dan O’Brien, Deborah Doyle, and Karen Bangs. Commissioner Crofoot made a motion that the Commission approve the Certificate of Need, which was seconded by Vice Chairman Malouf, and unanimously approved.

Riderwood Village Specialty Home Health Agency: Application for Certificate of Need, Docket No. 03-15-2115 is hereby APPROVED.

ITEM 5.

CERTIFICATION OF ELECTRONIC HEALTH NETWORKS

- RealMed
- ANS Link
- WebMD

Chairman Wilson announced that the Commission would next consider applications from RealMed, ANS Link, and WebMD for electronic health network certification. David Sharp, Chief of EDI, presented these applications for certification.

Vice Chairman Malouf made a motion to approve the certification of ANS Link, which was seconded by Commissioner Larry Ginsburg, and unanimously approved.

ACTION: ANS Link is hereby APPROVED as an electronic health network.

Commissioner Crofoot made a motion to approve the certification of RealMed, which was seconded by Vice Chairman Malouf, and unanimously approved.

ACTION: RealMed is hereby APPROVED as an electronic health network.

Vice Chairman Malouf made a motion to approve the certification of WebMD, which was seconded by Commissioner Crofoot, and unanimously approved.

ACTION: WebMD is hereby APPROVED as an electronic health network.

ITEM 6.

ACTION: COMAR 10.24.17— State Health Plan for Facilities and Services: Cardiac Surgery and Percutaneous Coronary Intervention Services

Chairman Wilson said that at the July Commission meeting, staff briefed Commissioners on a draft update of the State Health Plan for Cardiac Surgery and Percutaneous Coronary Intervention Services. This update was based, in part, on the recommendations of the Advisory Committee for Cardiovascular Care, which were adopted by the Commission in June. An informal comment period following the July meeting ended August 20th. Commissioners had received copies of the informal public comments, staff's response and recommended actions. Commissioner Jensen recused himself from consideration of this matter. Pamela Barclay, Deputy Director of Health Resources, reviewed staff's recommendations. She indicated that the new Commissioners had received all of the material presented previously on this issue. Ms. Barclay stated that the draft update of the State Health Plan for Cardiac Surgery and Percutaneous Coronary Intervention reflects the work of the Advisory Committee on Outcome Assessment for Cardiovascular Care to date. The draft plan updates the issues and policies, standards for Certificate of Need review, and the forecast of future cardiac surgery utilization. During the informal comment period, twelve organizations submitted comments on the draft Commission program policies. The draft plan recommended:

- The creation of primary (emergency) angioplasty centers with waivers to be granted for a two-year period.

- The Maryland Institute for Emergency Medical Services Systems (MIEMSS) should develop and implement a protocol that will triage appropriate acute MI patients to a primary angioplasty center provide that the time to treatment is not significantly increased.
- Maryland should continue to require that hospitals providing elective angioplasty services have cardiac surgical services on-site. The Commission should establish a process for considering waivers to permit research projects that advance the understanding of how cardiac care services should be organized.
- The Commission should appoint a Research Proposal Review committee to review and provide advice on any research proposal submitted to the Commission that requires a waiver.
- The Commission will approve the establishment of a new cardiac surgery program in a regional service area projected to have stable or declining OHS utilization only if the Commission determines that the establishment of the new program will demonstrably benefit the service area population in access, quality, and/or cost effectiveness and the value of that benefit is greater than any increased cost that may result from distributing the projected OHS cases over a larger number of programs in the region.
- Commission staff recommended clarifying language to several sections of the draft State Health Plan

Vice Chairman George Malouf made a motion that the Commission approve the draft State Health Plan section for public comment, which was seconded by Commissioner Crofoot and unanimously approved.

ACTION: COMAR 10.24.17— State Health Plan for Facilities and Services: Cardiac Surgery and Percutaneous Coronary Intervention Services is hereby APPROVED for release for public comment.

ITEM 7.

ACTION: COMAR 31.11.06 — Comprehensive Standard Health Benefit Plan — Staff Recommendations

Chairman Wilson said that this year's annual review is particularly challenging as the Commission is required by law to keep the average premium for the plan, without riders, under a new statutory affordability cap, which is 10% of Maryland's average annual wage. The Commission held two public hearings on these recommended changes.

Enrique Martinez-Vidal, Deputy Director for Performance and Benefits, and Bruce Kangisser from Mercer Human Resource Consulting, presented recommended changes to the benefit plan that can be achieved through regulation.

In September, staff released for public comment two recommended scenarios for modifications to the Comprehensive Standard Health Benefit Plan (CSHBP). The Maryland Insurance Administration and the Commission have joint responsibility for administering the small group market reforms enacted in 1993. The Commission is responsible for the design and annual review of the CSHBP. Mercer Health Resources Consulting, Inc., the Commission's actuarial consultant, provided a report that summarizes the 2002 experience for the CSHBP and projects the experience to 2003 and 2004. The analysis also included the estimated impact on premium of the requested benefit changes that were submitted to the Commission

through legislation considered by the 2002 Maryland General Assembly and by other stakeholders. Staff recommended the following modifications:

New Methodology (Riders Excluded):

Projected Ratio of Premium Rate to Rate Ceiling by 2004: 114.8%

Recommended Modifications

- Pharmacy: maintain generic copay of \$15, increase copay for Tier 2 to \$25 and increase copay for Tier 3 to \$50 - 1.0%
- Increase ER copay from \$35 to \$100 - 1.0%
- Increase PPO deductible (\$2500/\$5000) - 9.4%
- Increase POS deductible (\$1000/\$2000) - 0.6%
- Increase Indemnity deductible (\$2500/\$5000) - 0.0%
- HMO – Increase PCP/Specialist copay from \$20/\$30 to \$30/\$40 - 0.8%
- Increase special services copay to be in line with specialist copay - 2.1%

- Sub-Total: - 14.9%

Projected Ratio if changes are adopted: 99.9%

Commissioner Crofoot made a motion to accept the staff recommendations, which was seconded by Vice Chairman Malouf, approved by Commissioners Crofoot, Ginsburg, Jensen, Lucht, Moffitt, Nicolay, and Risher. Commission Salamon voted against the motion.

ACTION: COMAR 31.11.06 — Comprehensive Standard Health Benefit Plan — Staff Recommendations are hereby APPROVED.

ITEM 8.

RELEASE FOR INFORMAL PUBLIC COMMENT: COMAR 10.24.10.07 State Health Plan: Acute Care Bed Need Projection Methodology and 2010 Forecast

Paul Parker, Health Policy Analyst, said that *Recommended Changes to the Acute Care Bed Need Projection Methodology, and the 2010 Bed Need Forecast: Working Paper* describes recommended changes to the acute care need bed projection methodology, which is found in regulation at COMAR 10.24.10.07. Two types of changes are recommended: new “target values” (the expected future values of hospital discharge rates and average length of stay), which are routine inputs to the methodology that are adopted through the regulatory process whenever the projections are revised, and changes to the steps and policies in the methodology, including the scale of bed occupancy rates applied to projected average daily census to calculate gross bed need. Additionally, the report includes an updated forecast of medical/surgical and pediatric bed need for 2010, which employs the recommended revisions to the methodology. Staff recommended that the Commission release the proposed changes to the methodology and 2010 bed need estimates for an informal comment period concluding on Monday, November 24, 2003. Vice Chairman Malouf made a motion that the Commission approve the staff recommendation, which was seconded by Commissioner Ginsburg, and unanimously approved.

RELEASE FOR INFORMAL PUBLIC COMMENT: COMAR 10.24.10.07 State Health Plan: Acute Care Bed Need Projection Methodology and 2010 Forecast is hereby APPROVED.

ITEM 9.

ACTION: POSTPONEMENT OF CONSIDERATION OF REQUEST FOR DECLARATORY RULING, Objection to the CON Exemption Request to Establish an Obstetrics Service at North Arundel Hospital

Chairman Wilson recused himself from consideration of this matter, as did Commissioner Jensen. Vice Chairman Malouf chaired the remainder of the meeting. The Commission received a filing on September 17, 2003 from MedStar Health and Harbor Hospital requesting a declaratory ruling with respect to a legal issue presented by an exemption request from North Arundel Hospital and the University of Maryland Medical System seeking to establish an obstetrics service at North Arundel Hospital. Under our procedural regulations, a Petition for Declaratory Ruling must be placed on the Commission's agenda while it is pending. The Commission must act on the Petition within established timeframes and is permitted to have additional time by voting to postpone consideration. To provide additional time to consider this request and to formulate a proposed decision, staff recommended that the Commission vote to postpone consideration of the Petition for Declaratory Ruling until the November meeting. Commissioner Ginsburg made a motion to accept the staff recommendation, which was seconded by Commissioner Crofoot, and unanimously approved.

ACTION: POSTPONEMENT OF CONSIDERATION OF REQUEST FOR DECLARATORY RULING, Objection to the CON Exemption Request to Establish an Obstetrics Service at North Arundel Hospital is hereby APPROVED.

ITEM 10.

Hearing and Meeting Schedule

Vice Chairman Malouf said that the next scheduled meeting of the Maryland Health Care Commission would be on Thursday, November 20, 2003 at 4160 Patterson Avenue, Room 100, in Baltimore, Maryland at 1:00 p.m.

ITEM 11.

Adjournment

There being no further business, the meeting was adjourned at 3:47 p.m. upon motion of Commissioner Ginsburg, which was seconded by Commissioner Crofoot, and unanimously approved by the Commissioners.